HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Civil Revision No.89 of 2007

Salika Begum

versus

Smt. Geeta Gupta and others

Civil Revision No.90 of 2007

Salika Begum

versus

Sandhya Rao and others

Civil Revision No.97 of 2007

Smt. Geeta

versus

The Chhattisgarh State Election Commission and others

ORDER

Post for 11 -12-2007

Sd/-
Dilip Raosaheb Deshmukh
Judge

A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Civil Revision No.89 of 2007

Applicant/ Respondent No.3	Salika Begum, W/o Juber Ahmad, Aged about 39 years, R/o Near Old Bus Stand, Main Road, Gaurella, Tahsil Pendra Road, District Bilaspur (C.G.)
	versus
Respondent/ Election Petitioner	1. Smt. Geeta Gupta, W/o Madanlal Gupta, R/o Near State Bank, Pendra Road, Gaurella, District Bilaspur (C.G.)
Respondents	2. Chhattisgarh State Election Commission, Through Election Officer, R.P.Mishra, Nagar Panchayat Election 2004, Gaurella, Tahsil Pendra Road, District Bilaspur (C.G.) 3. State of Chhattisgarh, Through Collector, Distt. Bilaspur 4. Sandhya Rao, W/o Rajendra Sharma, R/o Near Old Bus Stand, Main Road, Gaurella, Tahsil Pendra Road, District Bilaspur (C.G.) 5. Geeta Soni, W/o Mahendra Soni, R/o Mangli Bazar, Near Water Tank, Gaurella 6. Aisha Begum, W/o Latif, R/o Deepu Mohalla, Nagar Panchayat Gaurella, Tahsil Pendra Road, District Bilaspur (C.G.) 7. District Election Officer, Nagriya Nikay, Election Year 2004, Bilaspur, through Collector, Bilaspur (C.G.) 8. Returning Officer, Nagar Panchayat Gaurella, Election Year 2004 Gaurella, Tahsil Pendra Road, District Bilaspur (C.G.)

Civil Revision under Section 26(2) of the Chhattisgarh Municipalities Act, 1961 read with Rule 19 of the Chhattisgarh Municipalities (Election Petition) Rules, 1962

Present: Shri P. Diwakar, Senior Advocate with Shri Manoj Paranjpe and Shri Ashok Soni, counsel for the applicant.
Shri Rajesh Pandey, counsel for respondent No.1.
Shri Akhil Agrawal, Panel Lawyer for the State/respondent No.3.
Shri Kanak Tiwari, Senior Advocate with Shri Ankit Pandey, counsel for respondent No.4.

Civil Revision No.90 of 2007

Applicant/ Respondent No.5

Salika Begum, W/o Juber Ahmad, Aged about 39 years, R/o Near Old Bus Stand, Main Road, Gaurella, Tahsil Pendra Road, District Bilaspur (C.G.)

versus

Respondent/ Election Petitioner

1. Sandhya Rao, W/o Rajendra Kumar, Aged about 32 years, R/o Gaurella, District Bilaspur (C.G.)

Respondents

2. State of Chhattisgarh, Through Secretary, Nagriya Nikay Prasashan, Raipur (C.G.)
3. Chhattisgarh State Election Commission, Through Chief Election Commissioner, Raipur (C.G.)
   Both above Office of D.K.S. Bhawan, Mantralaya, Raipur (C.G.)
4. District Election Officer, through Collector, Bilaspur
5. R.K.Mishra, Election Officer, Nagar Panchayat Gaurella, Election Year 2004, Tahsil Office Pendra Road, District Bilaspur (C.G.)
6. Geeta Gupta, Aged about 37 years, W/o Madanlal Gupta, R/o Near State Bank Gaurella, Pendra Road, District Bilaspur (C.G.)
7. Geeta Soni, Aged about 44 years, W/o Mahendra Soni, R/o Mangli Bazar, Near Water Tank, Gaurella, Pendra Road, District Bilaspur (C.G.)
8. Aisha Begum, W/o Latif, R/o Deepu Mohalla, Nagar Panchayat Gaurella, Tahsil Pendra Road, District Bilaspur (C.G.)

Civil Revision under Section 26(2) of the Chhattisgarh Municipalities Act, 1961 read with Rule 19 of the Chhattisgarh Municipalities (Election Petition) Rules, 1962

Present : Shri P. Diwakar, Senior Advocate with Shri Manoj Paranjpe and Shri Ashok Soni, counsel for the applicant.
Shri Kanak Tiwari, Senior Advocate with Shri Ankit Pandey, counsel for respondent No.1.
Shri Akhil Agrawal, Panel Lawyer for the State/respondent No.2.
Shri Rajesh Pandey, counsel for respondent No.6.

Civil Revision No.97 of 2007

Applicant Smt. Geeta, wife of Madan Lal Gupta, aged about 40 years, R/o Near State Bank, Pendraroad (Gaurella), District Bilaspur (C.G.)

versus

Respondents

1. The Chhattisgarh State Election Commission, Through Election Officer, R.P.Mishra, Nagar Panchayat Election 2004, Gaurella, Tahsil Pendraroad, District Bilaspur (C.G.)
2. The State of Chhattisgarh, Through Collector, Bilaspur, District Bilaspur (C.G.)
3. Shakila Begum, wife of Juber Ahemad, R/o Near Old Bus Stand, Main Road, Gaurella, Tahsil Pendraroad, District Bilaspur (C.G.)
4. Sandhya Rao, wife of Rajendra Sharma, R/o Near Old Bus Stand, Main Road, Gaurella, Tahsil Pendraroad, District Bilaspur (C.G.)
5. Geeta Soni, wife of Mahendra Soni, R/o Mangli Bazar, Near Water Tank, Gaurella, Tahsil Pendraroad, District Bilaspur (C.G.)
6. Aisha Begum, wife of Latif, R/o Deepu Mohalla, Nagar Panchayat Gaurella, Tahsil Pendraroad, District Bilaspur (C.G.)
7. The District Election Officer, Nagariya Nikay, Election Year 2004, Bilaspur, Through Collector, Bilaspur (C.G.)
8. The Returning Officer, Nagar Panchayat Gaurella, Election Year 2004 Gaurella, Tahsil Pendraroad, District Bilaspur (C.G.)

Civil Revision under Section 26(2) of the Chhattisgarh Municipalities Act, 1961

Present : Shri Rajesh Pandey, counsel for the applicant.
Shri Akhil Agrawal, Panel Lawyer for the State/respondent No.2.
Shri P. Diwakar, Senior Advocate with Shri Manoj Paranjpe and Shri Ashok Soni, counsel for respondent No.3.
Shri Kanak Tiwari, Senior Advocate with Shri Ankit Pandey, counsel for respondent No.4.

ORDER

(Passed on 11th day of December, 2007)

This common order shall govern Civil Revisions No.89 of 2007, 90 of 2007 and 97 of 2007, arising out of the order dated 28-07-2007 passed by the Additional District Judge, Pendra Road, District Bilaspur in Election Petitions No.12 of 2007 and 13 of 2007.

(2) There is a typographical error apparent in the cause-title of Civil Revisions No.89 of 2007 and 90 of 2007, since, instead of Smt. Shakila Begum, the name of the applicant is shown as Salika Begum.

(3) The following facts necessary for adjudication of all the three revisions were not disputed during the course of arguments:

(i) The time schedule under Rule 21 of the Chhattisgarh Nagarpalika Nirvachan Niyam, 1994 (henceforth 'The Niyam, 1994') for the election of the office of President of the Nagar Panchayat Gaurella, a seat reserved for women of Other Backward Classes (henceforth 'O.B.C.') was as under:

(A)	For filing of nomination	29-11-2004	upto 3 P.M.
(B)	For scrutiny of nomination	30-11-2004	from 10 A.M.
(C)	Last date for withdrawal of candidature	02-12-2004	upto 3 P.M.
(D)	Polling	17-12-2004	from 7 A.M. till 5 P.M.
(E)	Counting of votes	19-12-2004	from 9 A.M.

(ii) Smt. Shakila Begum, applicant in Civil Revisions No.89 of 2007 and 90 of 2007, Smt. Geeta Gupta, applicant in Civil Revision 97 of 2007, Smt. Sandhya Rao, Smt. Geeta Soni and Smt. Aisha Begum filed nominations on 29-11-2004. Scrutiny was held by Returning Officer Shri R.P.Mishra, N.A.W.-1 on 30-11-2004. Smt. Sandhya Rao filed an

objection that the caste certificates of O.B.C. of Chhattisgarh State produced by Smt. Shakila Begum and purporting to have been issued by Naib-Tahsildar, Gaurella were forged and the caste certificate issued by S.D.O., Anuppur (Madhya Pradesh) on 18-11-2004, showing her caste as "Momin Julaha" an O.B.C. in the State of Madhya Pradesh, was cancelled by order dated 27-11-2004 and, therefore, was no more in existence. Shri R.P.Mishra, Returning Officer, in the presence of the candidates or their representatives, considered the said objection and rejected the nomination of Smt. Shakila Begum on the sole ground that caste certificate dated 18-11-2004 issued by S.D.O., Anuppur (Madhya Pradesh) had been cancelled on 27-11-2004 and was not in existence.

(iii) On 02-12-2004, the date for withdrawal of candidature, Smt. Geeta Soni withdrew her candidature and election symbols were allotted to Smt. Aisha Begum, Smt. Geeta Gupta and Smt. Sandhya Rao. In the meanwhile, Smt. Shakila Begum preferred Writ Petition No.4612 of 2004 on 02-12-2004 and prayed for interim relief on the ground that the Returning Officer did not consider the two caste certificates issued by the Naib-Tahsildar, Pendra Road in Revenue Case No.208B/121/2003-04 showing her caste as "Momin Julaha", an O.B.C. under the Notification No.F12-34-82-2-25 dated 06-12-1982 issued by the State Government. On 02-12-2004, i.e., the date of filing of the Writ Petition, the following order was passed by Hon'ble Shri L.C.Bhadoo, J.:

> "Having heard the learned counsel for the parties and having regard to the facts and circumstances of the case, as per the case of the petitioner her caste certificate, which was issued by the S.D.O., Anuppur (M.P.) has been cancelled

without giving notice of hearing to her. Moreover, the caste certificates Annexure P-2 & P-5 issued by Naib-Tahsildar, Pendra Road have not been taken into consideration by the Returning Officer while passing the impugned order that these certificates are still in existence.

Therefore, in view of above, I am of the opinion that it is a fit case in which the operation of the impugned order should be stayed. Accordingly, it is directed that the operation and implementation of the impugned order dated 30.11.2004 passed by the Returning Officer, Pendra Road shall remain stayed until further orders."

(iv) Facing an imbroglio, the State Election Commission, upon receiving a proposal from the Collector and the District Election Officer, Bilaspur on 04-12-2004, passed an order on the same day, which reads as under:

"छत्तीसगढ़ राज्य निर्वाचन आयोग

महानदी खण्ड, मंत्रालय परिसर

रायपुर (छ.ग.)

कमांक एफ–134/रानिआ/न.पा/समय अनुसूची /2004/2392 दिनांक 04 दिसम्बर 2004

प्रति

कलेक्टर एवं
जिला निर्वाचन अधिकारी,
(स्थानीय निर्वाचन)
जिला – बिलासपुर
(छत्तीसगढ़)

विषयः– नगर पंचायत गौरेला के अध्यक्ष पद हेतु निर्वाचन कार्यक्रम प्रस्ताव अनुमोदित करने बाबत् ।

संदर्भ :– आपका ज्ञाप कमांक 952/स्था.निर्वा./2004 बिलासपुर दिनांक 4.12.04

———0———

कृपया अपना संदर्भित पत्र देखें । आपने माननीय उच्च न्यायालय द्वारा WP 4612/2004 शकीला बेगम विरूद्ध छत्तीसगढ़ शासन एवं अन्य 2 प्रकरण में पारित आदेश के संदर्भ में माननीय उप महाधिवक्ता एवं अतिरिक्त महाधिवक्ता से चर्चा की है । विधिक अनुशंसा और आपके प्रस्ताव के अनुसार इस प्रकरण में **श्रीमती शकीला बेगम के निरस्त किये गये नामांकन पत्र को** ***(emphasis supplied by me)*** माननीय उच्च न्यायालय के आदेश के प्रकाश में पुनः समीक्षा दिनांक 4.12.2004 को समय 4.30 बजे की जाये । उसी अनुक्रम में नाम वापिसी के लिये दिनांक 5.12.2004 का अपरान्ह 4.00 बजे तक का समय अनुशंसित किया है, उसे भी अनुमोदित किया जाता है और तदुपरांत प्रतीक चिन्ह आबंटित किया जाये । निर्वाचन संबंधी अगली कार्यवाही नगरपालिक अधिनियम, नगरपालिका निर्वाचन नियम और राज्य निर्वाचन आयोग के स्थायी निर्देशों के अनुसार की जाये ।

हस्ताक्षर/–
4/12/2004
सचिव
छत्तीसगढ़ राज्य निर्वाचन आयोग
रायपुर

कार्यालय कलेक्टर एवं जिला निर्वाचन अधिकारी
{स्थानीय निर्वाचन} बिलासपुर छ0ग0

पृष्ठांकन कमांक/973/स्था.निर्वा./2004 बिलासपुर, दिनांक 4 दिसंबर–04

प्रतिलिपिः–

रिटर्निंग आफिसर {नपाप} गौरेला को सूचनार्थ एवं आवश्यक को सूचनार्थ एवं आवश्यक कार्यवाही हेतु ।

हस्ताक्षर/–
4–12–04
उप जिला निर्वाचन अधिकारी
{स्था. निर्वा.} हेतु जिला निर्वाचन अधिकारी
बिलासपुर छ0ग0"

(v) Pursuant to the above order dated 04-12-2004, which was communicated to the District Election Officer, Bilaspur and to the Returning Officer, Pendra Road on the same day, and time being short, notices were issued in a hurry to Smt. Shakila Begum and the other candidates by Shri R.P.Mishra, Returning Officer on 04-12-2004 itself for

appearing before him in the office of the Tahsildar, Pendra Road for scrutiny of the nomination papers. Smt. Shakila Begum and Smt. Aisha Begum appeared before the Returning Officer, while the other candidates did not. Notice on Smt. Sandhya Rao was served by affixture on her house since she was not available and notice on Smt. Geeta Gupta and Smt. Geeta Soni was served. No objections were made at the time of re-scrutiny. The Returning Officer passed an order after scrutiny that the **nominations** ***(emphasis supplied by me)*** were found to be valid. Thereafter, on 05-12-2004, none of the candidates withdrew their nomination. On 17-12-2004, polling took place and on 19-12-2004, Smt. Shakila Begum was declared elected as President of the Nagar Panchayat Gaurella.

(vi) To set aside the election of Smt. Shakila Begum, Election Petitions No.12 of 2007 and 13 of 2007 were filed by Smt. Geeta Gupta and Smt. Sandhya Rao respectively before the Additional District Judge, Pendra Road, District Bilaspur on 31-12-2004. Smt. Geeta Gupta made an additional prayer in the election petition for being declared as elected to the office of President, Nagar Panchayat Gaurella since after Smt. Shakila Begum, she had next secured the highest number of votes.

(vii) Writ Petition No.4612 of 2004 was withdrawn by Smt. Shakila Begum on 27-06-2007 since she had been permitted to contest the election and was also declared elected.

(viii) The caste "Momin Julaha" is also notified as an O.B.C. in Chhattisgarh.

(ix) Under the notification of the State Government No.F7-2/96/अ.प्र./एक, Bhopal, dated 12-03-1997, the cut off date for continuance of the status of O.B.C. held by a person in a State upon migration to another State is 26-12-1984.

(x) Migration of Smt. Shakila Begum to Pendra Road on account of her marriage to Juber Ahmad of Pendra Road, in Chhattisgarh (After Re-Organisation on 01-11-2000) took place in the year 1985.

(4) The learned Additional District Judge, Pendra Road framed the following issues:

> "01– क्या निर्वाचन अधिकारी, अनावेदक क्रमांक–04 (चुनाव याचिका क्रमांक 13/2007 में अनावेदक क्रमांक–04 एवं चुनाव याचिका क्रमांक 12/2007 में अनावेदक क्रमांक–08) को नामांकन पत्रों की पुनः समीक्षा का अधिकार नहीं था ?
>
> 02– क्या निर्वाचन अधिकारी अनावेदक क्रमांक–04 (चुनाव याचिका क्रमांक 13/2007 में अनावेदक क्रमांक–04 एवं चुनाव याचिका क्रमांक 12/2007 में अनावेदक क्रमांक–08) ने पुनः समीक्षा की विधिवत एवं उचित सूचना अध्यक्ष पद के प्रत्याशियों को नहीं दिया है ?
>
> 03– क्या उक्त निर्वाचन के समय शकीला बेगम के पक्ष में पिछड़ा वर्ग के उम्मीदवार होने का कोई वैध एवं प्रभावशील जाति प्रमाण पत्र नहीं था ?
>
> 04– क्या शकीला बेगम ने नायब तहसीलदार का फर्जी एवं कूटरचित जाति प्रमाण पत्र पेश कर कदाचरण किया है ?
>
> 05– क्या निर्वाचन अधिकारी द्वारा शकीला बेगम के नामांकन पत्र को अनुचित रूप से स्वीकार किया गया है ?

06– क्या श्रीमती शकीला बेगम का निर्वाचन शून्य एवं अवैध है ?"

(5) On issue No.1, it was held that pursuant to the order dated 02-12-2004 passed by the High Court of Chhattisgarh in Writ Petition No.4612 of 2004, the Returning Officer had jurisdiction to conduct re-scrutiny of nomination of Smt. Shakila Begum on 04-12-2004. On issue No.2, it was held that legal notice was not served on the candidates as required by law and sufficient opportunity for making objections was not given. On issues No.3 to 5, it was held that caste certificates purporting to have been issued by Naib-Tahsildar, Pendra Road in Revenue Case No.208B/121/2003-04 were forged and in view of the cancellation of the caste certificate dated 18-11-2004 issued by the S.D.O., Anuppur on 27-11-2004, Smt. Shakila Begum did not possess a valid caste certificate for contesting the election as an O.B.C. of Chhattisgarh and, therefore, the acceptance of nomination of Smt. Shakila Begum by the Returning Officer was improper. The learned Additional District Judge, Pendra Road held that the election of Smt. Shakila Begum as President of the Nagar Panchayat Gaurella was void being contrary to law. The prayer of Smt. Geeta Gupta for being declared as elected on the ground of having next secured the highest number of votes was also turned down and the post of President, Nagar Panchayat Gaurella was declared as vacant.

(6) Shri P.Diwakar, learned Senior Advocate appearing for Smt. Shakila Begum, applicant/revisioner in Civil Revisions No.89 of 2007 and 90 of 2007 and respondent in Civil Revision No.97 of 2007, argued that the order dated 02-12-2004 passed by the High Court of Chhattisgarh in Writ Petition No.4612 of 2004, till it was stayed, tantamounts to permitting

Smt. Shakila Begum to contest the election for the office of the President of the Nagar Panchayat Gaurella. Nomination of Smt. Shakila Begum was accepted after due notice to all candidates at the time of re-scrutiny. Certificate of caste issued by the Naib-Tahsildar, Gaurella was not rejected by the Collector to whom a complaint was made by Smt. Sandhya Rao on 30-11-2004. The Naib-Tahsildar was competent to issue a certificate of caste under the rules. In this manner, corrupt practice by Smt. Shakila Begum has not been proved. "Momin Julaha", a caste under O.B.C. recognised in the State of Madhya Pradesh is also a caste notified under O.B.C. in the State of Chhattisgarh.

(7) Shri Kanak Tiwari, learned Senior Advocate appearing for Smt. Sandhya Rao, respondent in all the civil revisions, argued that voluntary migration of Smt. Shakila Begum having taken place after the cut off date in the year 1985 upon her marriage with Juber Ahmad of Pendra Road did not confer the status of O.B.C. on Smt. Shakila Begum in Chhattisgarh, even though the caste "Momin Julaha" was notified as an O.B.C. in the State of Chhattisgarh. It was also argued that the Election Commission had no jurisdiction to put the election process in reverse gear under Rule 23 of the Niyam, 1994. It was also contended that the stage of scrutiny and the withdrawal of candidature having expired and election symbols having been allotted, the election process could not be reversed. The Election Commission also lacked jurisdiction to order re-scrutiny of nomination papers in isolation only for one candidate, i.e., Smt. Shakila Begum.

(8) Shri Rajesh Pandey, learned counsel appearing for Smt. Geeta Gupta, respondent in Civil Revisions No.89 of 2007 and 90 of 2007 and

applicant in Civil Revision No.97 of 2007, argued that the burden of proving, that the two certificates of caste under O.B.C. were issued by the Naib-Tahsildar, Pendra Road in favour of Smt. Shakila Begum after due enquiry, was on her. The finding recorded by the learned Additional District Judge, Pendra Road that the certificates of caste, purporting to have been issued by the Naib-Tahsildar, Pendra Road in Revenue Case No.208B/121/2003-04 showing her caste as "Momin Julaha", an O.B.C. under the Notification No.F12-34-82-2-25 dated 06-12-1982 issued by the State Government, were forged, was based on proper appreciation of evidence, oral as well as documentary, and did not call for any interference in exercise of the revisional jurisdiction.

(9) Having considered the rival contentions, I have perused the record of Election Petitions No.12 of 2007 and 13 of 2007.

(10) Section 26 of the Chhattisgarh Municipalities Act, 1961 (henceforth 'the Act, 1961') reads as under:

> "**26. Finality of decision**.– (1) No appeal shall lie against the decision of the Judge on the petition.
>
> (2) Any person aggrieved by the decision of the Judge on the petition may, within thirty days from the date of such decision, apply to the High Court for revision on any of the following grounds:-
>
> (a) that the decision is contrary to law;
>
> (b) that the Judge has exercised jurisdiction not vested in him by law or has failed to exercise a jurisdiction vested in him by law, but subject to such orders as the High Court may pass thereon, such decision shall be final."

In these revisions, the impugned orders are, therefore, required to be tested on the grounds mentioned under clauses (a) and (b) of sub-section (2) of Section 26 of the Act, 1961.

(11) Chapter IV of the Niyam, 1994 deals with conduct of election. Rule 21 of the Niyam, 1994 provides for notice of election and time-schedule therefor, which reads as under:

> "**21. Notice of Election and time schedule therefor.** – In accordance with the time Schedule prescribed by the Election Commission, the District Election Officer shall by notice in Form 2 specify, -
>
> (a) the last date, time and place for making nominations for election to the seat of Mayor, President or Councillor which shall be the seventh day after the date of publication of the notice or if that day is a public holiday, the next succeeding day which is not a public holiday;
>
> (b) the date, time and place for the scrutiny of nominations, and such date shall be the day next following the last date appointed for making nominations, or if that day is a public holiday, the next succeeding day which is not a public holiday;
>
> (c) the last date for withdrawal of candidature which shall be the second day after the date for the scrutiny of nominations, or if that day is a public holiday, the next succeeding day which is not a public holiday;
>
> (d) the date on which and the time during which the poll shall, if necessary, be taken; and

(e) the date, time and place for the counting of votes:-

Note.- "Public Holiday" means any day which is declared to be a holiday by the State Government for its offices as well as the Government Treasuries and Sub-Treasuries in the State."

(12) Rule 23 of the Niyam, 1994, which authorises the Election Commission, for reasons to be recorded, to extend the time for completion of an election by making necessary amendments in the time schedule prescribed by it under Rule 21 of the Niyam, 1994 reads as under:

> "**23. Extension of time for completion of Election.** – It shall be competent for the Election Commission for reasons which it considers sufficient to extend the time for completion of any election by making necessary amendments in the time schedule prescribed by it under rule 21."

The interpretation of the words "to extend the time" is, therefore, required to be made. Under the Advanced Law Lexicon by P. Ramanatha Aiyar, 3rd Edition 2005, at page 1737 under the heading "Extend the time", it has been said that Prolongation of time cannot occur after the time originally limited has expired. While a right is extant and is not extinguished, extension can be given for the purpose of enlarging the duration. (*National Industrial Corporation Ltd.* v. *Registrar of Companies*, (1963) 33 Comp. Cas. 265). In my considered opinion, extension of time is possible only during the currency of the time stipulated under the rules for any act to be performed and not after its expiry.

(13) Under Rule 21 of the Niyam, 1994, when a date, time and place for scrutiny of nominations were fixed by the State Election Commission and

on 30-11-2004, the stage of scrutiny of the nominations of the candidates was over and thereafter the next stage for withdrawal of candidature had also been crossed on 02-12-2004 and election symbols were allotted to the candidates, the Election Commission had no jurisdiction to order re-scrutiny of the nomination of Smt. Shakila Begum in isolation. It appears that to sort out the imbroglio due to the order dated 02-12-2004 passed in Writ Petition No.4612 of 2004, the Election Commission took such a step to somehow complete the election process. Instead of immediately seeking a clarification from the Court as regards the effect of its order dated 02-12-2004 on the further stages of the election process or praying for vacating the said order, it passed the order dated 04-12-2004 by setting the clock back in motion and relegating the election process to the stage of 30-11-2004. It is pertinent to note that in the said order dated 04-12-2004, the State Election Commission ordered re-scrutiny only of the nomination paper of Smt. Shakila Begum. In my considered opinion, the Election Commission had no jurisdiction to do so under Rule 21 of the Niyam, 1994. The effect of the order dated 02-12-2004 passed in Writ Petition No.4612 of 2004 was to stay the operation and implementation of the order dated 30-11-2004 passed by the Returning Officer, Pendra Road until further orders. The order dated 30-11-2004 was passed by the Returning Officer at the stage of scrutiny of nomination papers. Once the order passed by the Returning Officer after scrutiny of nomination papers was stayed, as a consequence thereof, further stages in the election process came to stand still and could not continue till the order was in force. Therefore, the Election Commission could have extended the time for completion of the remaining stages of the election process in such a manner so as to enable it to seek vacation of the order dated 02-12-2004

passed in Writ Petition No.4612 of 2004. It could not relegate the election process to the stage of scrutiny of nominations because the time for scrutiny of nomination papers had already expired on 30-11-2004 and the next stage for withdrawal of candidature had also been crossed and symbols had been allotted to the candidates whose nominations were found to be valid. In my considered opinion, the procedure followed by the Election Commission has vitiated the entire election process because by virtue of the order dated 02-12-2004 passed in Writ Petition No.4612 of 2004, the election process came to a halt and could not proceed further till the stay was vacated. Thus, the learned Additional District Judge, Pendra Road erred in recording a finding that pursuant to the order passed by the High Court of Chhattisgarh in Writ Petition No.4612 of 2004 on 02-12-2004, the Returning Officer had jurisdiction to conduct re-scrutiny of nomination of Smt. Shakila Begum on 04-12-2004. Once the date for scrutiny of nomination papers and the withdrawal of candidature had been crossed and election symbols were allotted, the election process could not be put in a reverse gear by fixing a date for re-scrutiny of nomination of only one candidate, i.e., Smt. Shakila Begum. She ought to have waited till the results were declared and filed an election petition on the ground that her nomination paper had been improperly rejected.

(14) Under Rule 28(1) of the Niyam, 1994, on the date fixed for scrutiny of the nomination papers received under Rule 25 of the Niyam, 1994, the candidates, their election agents, one proposer of each candidate, and one other person duly authorised in writing by the candidate, but no other person, may attend at the time and place appointed in this behalf under Rule 21 of the Niyam, 1994 and the Returning Officer shall give them all reasonable facilities for examining the nomination papers of all candidates

which had been delivered as required by Rule 25 of the Niyam, 1994. The words "on the date fixed for the scrutiny of nomination papers" contemplate a future date or at the most the day next to the passing of the order to facilitate the candidates and their election agents, one proposer of each candidate and one other person duly authorised in writing by the candidate, but no other person, to be present at the time and place appointed in this behalf for scrutiny of the nomination papers. The manner in which re-scrutiny of nomination paper of Smt. Shakila Begum was done on 04-12-2004 in hot haste does not in any manner satisfy the requirement of sub-rule (1) of Rule 28 of the Niyam, 1994. The candidates ought to have prior intimation that scrutiny of nomination papers is to be conducted on any future date so as to facilitate them to appear along with their election agents, one proposer of each candidate, and one other person duly authorised in writing by the candidate to attend the scrutiny of nomination papers. The learned Additional District Judge, Pendra Road has, after proper appreciation of evidence led by the parties and the documents relating to service of notice on the candidates, rightly arrived at a conclusion that notice as required by law was not served on the candidates and sufficient opportunity for making objections was not given to the candidates at the time of re-scrutiny of nomination papers.

(15) Another glaring feature which vitiates the entire election process is that the order dated 30-11-2004 passed by the Returning Officer, whereby the nomination of Smt. Shakila Begum was rejected, was founded on an order passed by the S.D.O., Anuppur on 27-11-2004, whereby the caste certificate of O.B.C. in Madhya Pradesh dated 18-11-2004 issued by S.D.O., Anuppur in favour of and furnished by Smt. Shakila Begum with her nomination paper was cancelled. The Returning Officer Shri

R.P.Mishra, N.A.W.-1 has, without mincing words, admitted in cross-examination in Election Petitions No.12 of 2007 and 13 of 2007 that on 04-12-2004 during re-scrutiny, he had considered the two certificates of caste issued by the Naib-Tahsildar, Pendra Road and did not find them to be relevant and had accepted the nomination of Smt. Shakila Begum only on the basis of the caste certificate issued by S.D.O., Anuppur on 18-11-2004. It means that the acceptance of the nomination paper of Smt. Shakila Begum on 04-12-2004 by the Returning Officer was based on a certificate dated 18-11-2004 issued by the S.D.O., Anuppur and not on the two certificates of caste issued by the Naib-Tahsildar, Pendra Road.

(16) In ***M.C.D.*** **vs.** ***Veena and others***, **(2001) 6 SCC 571**, the Apex Court observed as under:

> "**6.** Castes or groups are specified in relation to a given State or Union Territory, which obviously means that such caste would include caste belonging to an OBC group in relation to that State or Union Territory for which it is specified. The matters that are to be taken into consideration for specifying a particular caste in a particular group belonging to OBCs would depend on the nature and extent of disadvantages and social hardships suffered by that caste or group in that State. However, it may not be so in another State to which a person belonging thereto goes by migration. It may also be that a caste belonging to the same nomenclature is specified in two States but the considerations on the basis of which they had been specified may be totally different. So the degree of disadvantages of various elements which constitute the data for specification may also be entirely different. Thus, merely because a given caste is specified in one State as belonging to OBCs does not

necessarily mean that if there be another group belonging to the same nomenclature in another State, a person belonging to that group is entitled to the rights, privileges and benefits admissible to the members of that caste. These aspects have to be borne in mind in interpreting the provisions of the Constitution with reference to application of reservation to OBCs."

(17) Learned counsel appearing for the parties did not dispute the well settled legal proposition that Smt. Shakila Begum could not have contested the election for the office of the President, Nagar Panchayat Gaurella, a seat reserved for women of O.B.C. in Chhattisgarh merely on the basis of a certificate of caste under O.B.C. issued in her favour by S.D.O., Anuppur (in Madhya Pradesh) on 18-11-2004 even if the cancellation of such certificate on 27-11-2004 by S.D.O., Anuppur (Madhya Pradesh) was uncalled for because the status of O.B.C. of Smt. Shakila Begum in Madhya Pradesh was not destroyed merely on account of her voluntary migration to the State of Chhattisgarh. Be that as it may, the categorical admission by the Returning Officer Shri R.P.Mishra leaves no room for any doubt that he was not satisfied with the two certificates of caste issued by the Naib-Tahsildar, Pendra Road, which were produced by Smt. Shakila Begum and acceptance of nomination was solely on the basis of the caste certificate issued by S.D.O., Anuppur in Madhya Pradesh on 18-11-2004. Thus, acceptance of the nomination paper of Smt. Shakila Begum by the Returning Officer, Pendra Road on 04-12-2004 was wholly improper because it was founded on a certificate issued by S.D.O., Anuppur on 18-11-2004, which did not give the status of an

O.B.C. to Smt. Shakila Begum in Chhattisgarh on the date of filing of nomination papers.

(18) Since I have held that re-scrutiny of the nomination paper of Smt. Shakila Begum on 04-12-2004 was impermissible in law because the Election Commission had no jurisdiction to extend the time for completion of any stage of the election process, which had already elapsed, the entire election procedure and the result of the election are vitiated being contrary to law. As a sequel, the election of Smt. Shakila Begum for the office of the President, Nagar Panchayat Gaurella is rendered void *ab initio*. The dismissal of Election Petitions No.12 of 2007 and 13 of 2007 by the learned Additional District Judge, Pendra Road as also the rejection of the prayer of Smt. Geeta Gupta for being declared elected do not, therefore, call for any interference in exercise of the revisional jurisdiction.

(19) In the result, Civil Revisions No.89 of 2007, 90 of 2007 and 97 of 2007 are dismissed.

(20) Before parting with this order, I would like to emphasize that the State Government of Chhattisgarh should consider the need for an amendment in Rule 21 and Form No.2 issued under Rule 21 of the Niyam, 1994 for providing a stage for allotment of election symbols after the stage of withdrawal of candidature.

(21) A copy of this order be placed on the record of the two connected civil revisions.

Sd/-
Dilip Raosaheb Deshmukh
Judge

11-12-2007

Gopal